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August 1, 2006

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VIA HAND DELIVERY

Charles L. A. Terreni, Esquire
Chief Clerk and Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, SC 29210

RECEIVED

AUG 01 2006

PSC SC
DOCKETING DEPT.

RE: Petition of the Office of Regulatory Staff for a Rule-Making Proceeding to Examine the Requirements and Standards to be Used by the Commission when Evaluating Applications for Eligible Telecommunications Carrier (ETC) Status and When Making Annual Certification of ETC Compliance to the Federal Communications Commission
Docket No.: 2006-37-C

Dear Mr. Terreni:

Enclosed for filing in the above referenced docket are the original and ten copies (10) of the Comments of United Telephone Company of the Carolinas and Embarq Communications, Inc. ("Embarq") on Proposed Rulemaking to Examine the Requirements and Standards to be used by the Commission for Eligible Telecommunications Carrier Applications. Embarq reserves its rights to make such additional comments as are permitted it by the South Carolina rule making process. By copy of this letter, I am serving all parties of record.

Also enclosed is an extra copy of the Comments along with a Certificate of Service which I would ask you to date stamp and return to my office via my courier. If you have questions, please do not hesitate to contact me.

Sincerely,

Elliott & Elliott, P.A.

Scott Elliott

SE/jcl

Enclosures

cc: All Parties of Record w/enc.
H. Edwards Phillips, Esq.

RETURN DATE: 8/1/06 by 4:45 ok
SERVICE: N/A

ORIGINAL

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

In Re:)
)
Petition of the Office of Regulatory Staff for a)
Rule-Making Proceeding to Examine the)
Requirements and Standards to Be Used by the)
Commission When Evaluating Applications)
for Eligible Telecommunications Carrier)
(ETC) Status and When Making Annual)
Certification of ETC Compliance to the)
Federal Communications Commission)

Docket No. 2006-37-C

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SC PUBLIC SERVICE
COMMISSION

**COMMENTS OF UNITED TELEPHONE COMPANY OF THE
CAROLINAS AND EMBARQ COMMUNICATIONS, INC. ON PROPOSED
RULEMAKING TO EXAMINE THE REQUIREMENTS AND STANDARDS
TO BE USED BY THE COMMISSION FOR ELIGIBLE
TELECOMMUNICATIONS CARRIER APPLICATIONS**

On January 9, 2006, the South Carolina Office of Regulatory Staff (“ORS”) filed a motion in Docket No. 2005-219-C asking the Public Service Commission of South Carolina (“Commission”) to hold in abeyance the petition of Budget Phone, Inc., seeking designation as an Eligible Telecommunications Carrier (“ETC”). ORS’s motion requested that the Commission first decide whether multiple ETCs for one designated area should be permitted and that the Commission also adopt a single set of eligibility standards for ETC designation. ORS noted that the Federal Communications Commission (“FCC”) had adopted new and more rigorous

minimum requirements for designating ETCs and was strongly encouraging state commissions to adopt the new FCC requirements.¹

On January 31, 2006, the Commission entered Order No. 2006-71 granting the ORS motion and initiating this rulemaking proceeding to examine the requirements and standards to be used by the Commission when evaluating applications for ETC status and when making annual certification of ETC compliance to the FCC. Subsequently, to move this matter forward, the Commission issued a notice on May 9, 2006 in this docket requesting comments from interested parties. The Commission set the due date for comments no later than August 1, 2006.

Pursuant to the Commission's notice, United Telephone Company of the Carolinas and Embarq Communications, Inc. (collectively, "Embarq") submit these comments to the Commission. For reasons explained herein, Embarq does not believe a single set of criteria applied to all types of providers (e.g., incumbent local exchange carriers ("ILECs"), wireless carriers and competitive local exchange carriers) is practical or advisable. Embarq urges the Commission to make a distinction between ILECs already designated as ETCs and new entrants seeking ETC status or newly designated ETCs. As explained herein, creating such a distinction would not be discriminatory. Rather, creating the distinction as Embarq suggests would offer assurance that USF support is being used for its intended purpose, which is to preserve and advance universal service.

While the FCC's new requirements and annual certification process make sense for new entrants, they clearly are not applicable to ILECs already designated ETCs. The FCC encourages states to apply its new standards "in all cases" but—as discussed below—to do so simply makes no sense. For purposes of ETC designations, the FCC has jurisdiction only over wireless carriers,

¹ See *In re Federal-State Joint Board on Universal Service, Report and Order*, FCC 05-46, CC Docket No. 96-45 (Rel. March 17, 2005) ("hereinafter, March 17, 2005 Report and Order").

and only then if a state commission chooses not to assert jurisdiction for such purposes. Even the FCC in its March 17, 2005 Report and Order notes, “Specifically, portions of this order discuss the ETC framework as it relates to wireless carriers because those are the common carriers that most frequently seek to be designated as ETCs before the Commission.”²

There are 6 parts to the ETC eligibility standards that the FCC apparently would have this Commission adopt for granting ETC status to new entrants and for annually certifying that all ETCs are using USF support for intended purposes. The following briefly explains why each of the 6 parts is not appropriate or are unduly burdensome for ILECs already designated as ETCs in the state, but why they should be applied to ETC applicants and newly designated ETCs:

STANDARD

Under 47 C.F.R. § 54.202(a)(1)(A), the FCC requires an ETC applicant to commit to providing service throughout the proposed designated service area to all customers making a reasonable request for service.

EMBARQ’S RESPONSE:

ILECs such as Embarq are carriers of last resort in their states. As such, ILECs already have an obligation to serve anyone in their territories asking for service. Embarq would not object to certifying annually that it has fulfilled its carrier of last resort obligations.

However, for a competitive or wireless ETC, such a commitment by an ETC applicant offers the Commission some comfort that the applicant does not intend to serve just the ILEC’s lucrative customers and markets. Once a provider has been granted ETC status, the new ETC should assume the same carrier of last resort obligations to which the ILEC is subject. It is true that ETCs are allowed to fulfill their obligations to serve through a combination of their own

² *Id.* at note 44, p. 9.

facilities and resale. Nevertheless, a new ETC should be allowed to fulfill its carrier of last resort obligations through resale only in limited situations and for a limited period of time. Otherwise, the ETC would have an incentive to avoid investing in high-cost areas where an ILEC has already done so.

STANDARD:

Under 47 C.F.R. § 54.202(a)(1)(B), an ETC applicant is required to submit a 5 year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. The standard further requires a list of projects and their estimated costs and completion dates.

EMBARQ'S REPOSE:

For Embarq, this is the most troublesome requirement the FCC would have this Commission adopt for ILECs already designated as ETCs. If the Commission were to adopt this requirement, Embarq assumes it would have to develop a 5 year service improvement plan in order to annually report its progress in implementing the plan. Such a plan for ILECs already designated as ETCs is neither practical nor necessary for a number of reasons.

First, Embarq's detailed wire center level planning horizon is generally 12-18 months, but certainly no longer than 2 years. A host of variables, including changes in technology, customer needs, opportunity costs and population patterns make a longer planning horizon impractical and unwise.

Second, the standard implies that USF support must be used solely to make network improvements. There is no basis in federal statute for such a requirement. This standard has the effect of narrowing the purposes for which USF may be used, which is actually contrary to

federal law. The FCC's own rules explicitly permit USF support to be used “. . . not only for the build-out and expansion of a network, but also for its continued maintenance.” *See* 47 C.F.R. § 54.7. Embarq urges the Commission to take the position that maintenance of existing networks is a sufficient basis for retaining ETC status. In fact, the FCC's forward looking economic cost model (“HCPM”) used for the Federal USF program has a specific cost component expressly for maintenance.

Finally, it is worth reiterating that these requirements are the product of the FCC certifying *wireless* carriers as ETCs and--most importantly--wireless carriers whose serving areas did not match the serving area of the incumbent LEC. In discussing this 5 year plan, the FCC's Report and Order indicated that the plan should show how funds “. . . will be used to improve coverage, signal strength or capacity.” *See* the March 17, 2005 Report and Order at ¶ 21, p. 10. ILECs in South Carolina, as carriers of last resort, are obligated to provide 100% coverage to existing and new customers throughout their service areas. The notion of “improving coverage” when coverage is already required to be 100% is meaningless. Similarly, it may be that there are significantly more appropriate uses for USF dollars than “improving capacity” on an ILEC's wireline network when existing capacity is more than sufficient and additional capacity may never be used. Simply stated, the concerns that the proposed 5 year plan were intended to address are not concerns in the case of South Carolina ILECs. Embarq annually invests heavily in its South Carolina operations to meet the Commission's service standards and, more importantly, it customers' expectations for high quality service. Embarq meets or exceeds the Commission's service standards and is unaware of any general customer discontent with the quality of Embarq's service. Rather than imposing an obligation on ILECs to produce a 5 year plan that is unnecessary, the Commission should simply require ILECs to certify--as they do now

and have done--that the funds received will be used for the provision, maintenance and upgrading of the network used to provide the supported services.

Embarq does, however, understand why such a plan should be required for new entrants seeking ETC designation, although the Commission might consider a planning horizon of less than 5 years.³ While Embarq has rendered carrier of last resort service for many years, this may not be the case for a provider applying for ETC status. Requiring a network plan and progress reports would go a long way toward ensuring an applicant or a newly designated ETC is making a genuine effort to serve all its territory, especially the high cost areas already being served by the ILEC. Again, if a provider is awarded ETC status, the provider should be subject to the Commission's rules applicable to the ILEC, including carrier of last resort obligations and quality of service standards. When a newly designated ETC has convincingly demonstrated that it is in full compliance with the Commission's rules, the Commission could then consider eliminating the network plan requirement.

STANDARD:

Under 47 C.F.R. § 54.202(a)(2), the FCC requires an ETC applicant to demonstrate its ability to remain functional in emergency situations (e.g., back-up power, reroute traffic around damaged facilities, and manage traffic spikes).

EMBARQ RESPONSE:

The Commission's existing rules for ILECs adequately address backup-power, network capacity, and service interruptions. So long as more stringent or additional requirements are not contemplated, Embarq would not oppose certifying annually that it is meeting this requirement.

³ The Tennessee Regulatory Authority has suggested a 2 year plan under its proposed ETC rules. See proposed TRA rules at: <http://www.state.tn.us/tra/rules/proposed/DraftETCRulemaking.pdf>.

However, it is reasonable that an applicant seeking ETC designation that does not operate under the Commission's existing service quality rules -- such as a wireless carrier -- should be required to certify and explain how it will meet this requirement. The HCPM used to calculate USF support at the federal level for non-rural carriers assumes this level of network preparedness. Therefore, it is appropriate to require such a level from all ETCs. If the provider is designated an ETC, it then should be subject to the Commission's existing rules that require the ability to remain functional in emergency situations. Although redundant given the Commission's rules, annual certification of such ability should not be an issue.

STANDARD:

Under 47 C.F.R. § 54.202(a)(3), the FCC requires an ETC applicant to demonstrate it will satisfy applicable consumer protection and service quality standards.

EMBARQ'S RESPONSE:

The Commission's existing "Customer Relations," "Engineering," "Inspections and Tests," and "Standards and Quality of Service" rules comprise a complete and detailed statement of what the state expects from ILECs regarding consumer protection and service quality. Nothing more is needed. Embarq would not oppose certifying annually that it is complying with the Commission's existing rules in this regard.

An applicant seeking ETC designation should have to demonstrate how it also will comply with the Commission's rules related to consumer protection and service quality standards. If there are other standards germane to the applicant's industry (e.g., Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service), the Commission may want to consider requiring compliance with those standards in addition to

compliance with its own rules. After being designated an ETC, the provider should be subject to the same rules and certification requirements as those imposed on an ILEC.

STANDARD:

Under 47 C.F.R. § 54.202(a)(4), the FCC requires an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

EMBARQ'S RESPONSE:

The inapplicability to ILECs is obvious. An ETC applicant should be required to make such a demonstration. How else is the Commission to determine if an ETC is providing services comparable to those provided by an ILEC and for which the ILEC is receiving USF support?

STANDARD:

Under 47 C.F.R. § 54.202(a)(5), the FCC requires an ETC applicant to certify that the carrier acknowledges that the FCC (or a state commission) may require the ETC to provide equal access to long distance carriers in the event no other eligible telecommunications carrier is providing equal access within the service area.

EMBARQ'S RESPONSE:

The inapplicability to ILECs is again obvious. The FCC declined to impose an actual equal access obligation on ETC applicants. To the extent ILECs already designated ETCs are required to provide equal access, Embarq sees no reason that any other ETC should be permitted to avoid the obligation. There are costs attendant to providing equal access, whether that cost is born by customers or investors. To the extent an ILEC competitor receives USF support, but has

no actual obligation to provide equal access, the competitor has a cost and competitive advantage over the ILEC. Embarq urges the Commission to make all ETCs over which it has jurisdiction subject to the same rules, including equal access.

PUBLIC INTEREST ANALYSIS

In addition to the 6 requirements discussed above, the FCC's standards for designating ETCs include a public interest analysis to determine if multiple ETCs in a given area would support the goals of preserving and advancing universal service. The FCC conducts and encourages an especially rigorous analysis if an applicant is seeking ETC status in rural areas. Embarq believes it is imperative that this Commission do the same.

The FCC's concern here is that new entrants do not creamskim, that is to serve only the lower cost areas of a rural ILEC's territory while receiving support based on averaged costs that reflect the cost of providing service in both high and low cost areas. By serving only the low cost lines, the new entrant could reap a financial windfall by receiving USF support in excess of the economic costs it incurs. In some proceedings, new entrants have argued that a rural ILEC could disaggregate its costs below the study area level (e.g., determine costs at the wire center level) and thus avoid the risk of creamskimming by the new entrant. The Regulatory Commission of Alaska, for one, recently rejected the argument that calculating costs at the wire center level would reduce the risk of creamskimming. The Alaska commission noted that widely disparate population densities and costs have been shown to exist within a single wire center.⁴

Embarq's wire centers in South Carolina display this same variation in cost characteristics. Embarq has 20 wire centers in the state. The per-access line investment within

⁴ See The Regulatory Commission of Alaska's *Order Denying Petitions for Designation as an Eligible Telecommunications Carrier, Denying Request to Redefine Study Area, and Affirming Electronic Ruling*, Docket No. U-04-62, Order No. 9 (June 27, 2006) at p. 15.

each of the wire centers has been calculated using a conventional forward looking cost model. Specifically, per-access-line investments were calculated for access lines within 12,000 feet of the wire center and separately for access lines beyond 12,000 feet of the wire center. With two exceptions, the investment to serve the outlying area of a wire center is double the investment within 12,000 feet of the wire center. The exceptions are Embarq's largest wire centers – Beaufort and Greenwood. Even in these two more densely populated areas, the per-access line investment beyond 12,000 feet of the wire center are 65% greater than the investment within 12,000 feet.

The area within 12,000 feet of a wire center can be thought of as “in town,” while the area beyond 12,000 feet can be thought of as rural. Generally speaking, the networks of new entrants (e.g., cable television and wireless providers) often are concentrated “in town.” If such a new entrant were to gain ETC status even at a level as granular as a wire center, the new entrant could reap a windfall of USF support by receiving support based on the average per-access line cost for the entire wire center. And it should be noted, a token commitment to serve the outer areas through resale does nothing to offset this cream-skimming effect. The Commission should satisfy itself that an ETC applicant receiving high cost support is serving even the outlying high cost areas of a wire center. Embarq encourages the Commission to use this kind of rigorous analysis when conducting its public interest review related to an application for ETC status. Such an analysis becomes even more critical when the FCC permits an ETC applicant to redefine its service area and seeks state concurrence. As the FCC has observed, state commissions are the entities most familiar with the service area for which ETC designation is sought and are particularly well-equipped to determine their own ETC eligibility requirements.

Regarding the FCC annual reporting requirements for providers that have been designated ETCs, the reporting requirements fall into three broad categories – (1) a progress report on the provider’s 5 year service quality improvement plan that is required as part of a provider’s application to become an ETC; (2) quality of service measurements; and (3) certification that the ETC is complying with other FCC qualifying criteria like being able to function in emergency situations.

For reasons already explained, Embarq urges the Commission not to adopt the requirement that ILECs already designated as ETCs develop service quality plans. If the Commission accepts Embarq’s recommendation, an annual progress report will not be necessary. Also, Embarq sees no need in requiring ETCs to report the service measures recommended by the FCC. The Commission’s rules delineate the service measures to be observed by providers under its jurisdiction and how they are to be reported to the Commission. Duplicate or similar reporting requirements for annual ETC certification would be redundant and wasteful. Embarq has already noted that compliance with Commission rules should satisfy any concerns that ILECs are using USF support for intended purposes, and Embarq would not oppose certifying on an annual basis that it is in compliance with applicable Commission rules.

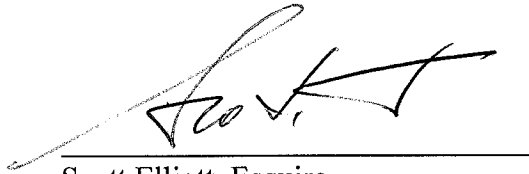
SUMMARY

Embarq urges the Commission not to adopt a single set of requirements and standards to be used when evaluating applications for ETC status and when making annual certification of ETC compliance to the FCC. Most of the FCC’s requirements are clearly met by ILECs complying with this Commission’s existing rules. Annually certifying compliance with applicable Commission rules, and thus demonstrating ETC compliance, would not be a challenge, and Embarq would not oppose doing so. However, Embarq strongly recommends that

the Commission not adopt the FCC rule requiring a service improvement plan, regardless of length, for ILECs already designated as ETCs. ILECs have ample incentives to continue investing in their networks that are currently fulfilling the ILECs' carriers of last resort obligations. The FCC's new requirements are clearly applicable to new ETC applicants. New ETC applicants should be required to demonstrate how they will comply with the FCC's requirements, including a network improvement plan and progress reports. The plans and reports will ensure that the new ETC serves even the high cost areas of their designated service territories, which is the purpose of USF support.

Finally, regardless of which FCC requirements the Commission chooses to adopt or modify for adoption in South Carolina as ETC eligibility criteria, the Commission must conduct a rigorous public interest analysis in evaluating any new applications for ETC status. In addition, as part of the public interest analysis, the Commission should bear in mind that costs can vary greatly even within a wire center. Therefore, requiring the actual provision of service to the entire wire center is the only way to ensure that USF support is being used for its intended purposes.

Respectfully submitted on this 1st day of August, 2006 by:

A handwritten signature in black ink, appearing to read 'Scott Elliott', is written over a horizontal line.

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ORIGINAL

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Petition of the Office of Regulatory Staff for a Rule-Making Proceeding to Examine the Requirements and Standards to be Used by the Commission When Evaluating Applications for Eligible Telecommunications Carrier (ETC) Status and When Making Annual Certification of ETC Compliance to the Federal Communications Commission

DOCKET NO.: 2006-37-C

PARTIES SERVED:

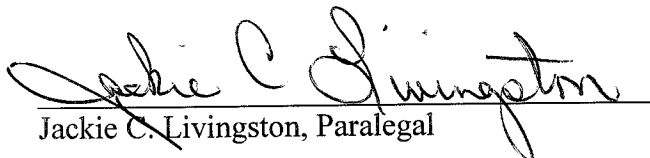
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COMMUNICATIONS
SECTION

PLEADING: Comments of United Telephone Company of the Carolinas and Embarq Communications, Inc. on Proposed Rulemaking to Examine the Requirements and Standards to be used by the Commission for Eligible Telecommunications Carrier Applications

August 1, 2006


Jackie C. Livingston, Paralegal